

# Agenda

## Item #2



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: December 19, 2008

Re: Additional Penalty against the Maine Association of Realtors PAC

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On October 10, 2008, the Maine Association of Realtors PAC entered into an obligation to its vendor, Creative Imaging Group, to send two postcard mailings in support of Republican Senate candidates Lois Snowe-Mello (District 15) and Christopher Rector (District 22). They were opposed by Democratic candidates Deborah Simpson (District 15) and David Miramant (District 22). The total cost of the mailings was \$6,155.79.

The PAC was required to file an independent expenditure report on the following day, Saturday, October 11. Instead, it filed the report 20 days late on October 31, 2008. The routine penalty for the late report was \$1,231.20.

Prior to the November 4, 2008 general election, the District 15 and 22 Senate races were viewed by some commentators as among the more competitive Senate elections in the state. This was reflected in the relatively close election results.

District 15	Result	Number of Votes
Lois Snowe-Mello	Lost	9,954
Deborah Simpson	Won (by 108 votes)	10,058
District 22		
Christopher Rector	Won (by 1,948 votes)	11,049
David Miramant	Lost	9,101

The Realtors PAC's late filing of the report delayed the payment of matching funds to Deborah Simpson and David Miramant by 20 days. For this reason, the staff believes the Commission should assess a significant additional penalty under 21-A M.R.S.A. § 1127(1).

#### **Explanation of Violation by the PAC**

The PAC's report was filed by Cindy Butts, who is employed by the Maine Association of Realtors. By letter dated November 19, 2008, I requested an explanation for the late report, notifying her that the late filing may subject the PAC to additional penalties. She

submitted the attached explanation. In the explanation, she stated that on Friday, October 10, 2008, the PAC made a commitment to a vendor, Creative Imaging Group, to send the mailings. The vendor replied that it would get back in contact after the Columbus Day holiday weekend with the final charge for postage. The vendor did not get back in touch as promised, and no other events reminded the PAC to submit an independent expenditure report. The PAC realized the report was late on October 31, and Cindy Butts filed the report on that date.

### **Impact of Delay in Matching Funds on Senate Candidates Deborah Simpson and David Miramant**

The Realtors PAC spent \$2,969.58 in support of Christopher Rector. If the PAC had filed its report on October 11 as required by law, that same day the Commission staff would have authorized David Miramant to spend that amount in matching funds. Instead, the PAC filed the independent expenditure report on October 31, and the Commission authorized Mr. Miramant to spend \$2,969.58 on that day.

Similarly, if the Realtors PAC had filed its independent expenditure report on October 11, the Commission would have paid \$3,186.21 to Deborah Simpson on October 11. Instead, she received \$1,270.07 in matching funds on October 31. (She received a lesser amount on October 31 because independent groups had spent money in support of her just before October 31.)

These delays in matching funds significantly disadvantaged Deborah Simpson and David Miramant. Receiving roughly \$3,000 3 ½ weeks before an election can open up considerable options for a Senate candidate to communicate with voters. It may be impossible for a candidate who receives roughly \$3,000 on the Friday before a general election to spend that amount on mailed literature, which is the preferred way for many candidates to communicate with voters. Also, with the increased use of absentee or early voting, a significant number of voters have already cast their ballot by the weekend before the election.

It is also worth noting that the races in Senate District 15 and 22 were viewed as very competitive before the general election. The margin of victory in the Simpson/Snowe-Mello race was only 108 votes. The sum of \$3,000 spent on a mailing could easily influence more than 108 votes. So, the impact of the Realtor PAC's late independent expenditure report should be viewed as serious.

### **Staff Recommendation**

When Ms. Butts was in the office to file the report on October 31, she was clearly distraught by the PAC's error in not filing the report earlier. The Commission staff is personally sympathetic to her, but in order to encourage timely filing of independent expenditure reports by PACs and party committees we believe the failure to file the report should be viewed as a significant violation. Candidates such as David Miramant and Deborah Simpson are legally entitled to receive these funds in a timely way in order

to keep them on an even playing field with their opponents. Regardless whether one agrees with the matching funds provisions in the law, when a PAC does not file an independent expenditure report on time, the late filing interferes with the fair administration of the Maine Clean Election Act.

While some aspects of the independent expenditure reporting law are complicated, the next-day filing deadline is easy to understand. If a PAC makes an obligation to make an independent expenditure of more than \$250 per candidate, it must report the expenditure within 24 hours, including on a Saturday or a Sunday. This deadline is clearly explained on the reporting form itself and in a question-and-answer format memo, both of which are posted on the Commission's website. Ms. Butts is well acquainted with the Commission staff, and could have directed anyone in her organization to call us if they had questions about the filing requirement. The Maine Association of Realtors PAC filed independent expenditures reports in the 2004 and 2006 elections.

In the view of the Commission staff, the report was late because of inattention or disorganization by the PAC. In making a penalty recommendation, the staff is heavily influenced by two of your recent decisions:

- At your October 27 meeting, you assessed a \$5,000 penalty against the Maine Democratic Party for its late filing of an independent expenditure report for two mailings in support of Deb Simpson. The party offered a convincing explanation that it intended to avoid express advocacy in the mailings, and that independent expenditure reporting was only required because its vendor unilaterally had inserted the express advocacy phrase "Deb Simpson for Senate" in each mailing. The Commission assessed a \$5,000 penalty for that violation, but decided against an additional penalty under 21-A M.R.S.A. § 1127(1).
- At your November 24 meeting, you assessed a \$10,000 penalty against the Fed Up with Taxes PAC for a 24-Hour Report due Saturday, October 25, 2008. The report disclosed very large purchases of advertising in support of the beverage tax repeal ballot question. The effect of the late reporting was to deprive the public of information about large campaign expenditures for a period of 2-3 days, but it did not affect the funding of any organization to influence the election. (The staff recommended a 90% reduction of the penalty to \$1,000 because of the good-faith of the attorney engaged to file the reports.)

In the view of the Commission staff, the late filing by the Maine Association of Realtors PAC is, regrettably, more serious than the late filings by the Maine Democratic Party and the Fed Up with Taxes PAC. That is because the Realtors PAC's late filing had a direct impact on the campaign funding available to two Senate candidates, one of which (David Miramant) lost. While Deborah Simpson won her election, that result was, of course, not known in advance, and the \$3,186.21 she should have received on October 11 could have made a significant impact in her race. Also, it is worth considering that the Realtors PAC filing was entirely in the control of the PAC, whereas the Maine Democratic Party did not

initially know that an independent expenditure report was required because its vendor had changed the language in the mailers.

The Commission staff believes the Commission should seek to keep penalties proportional, with more serious violations receiving a higher penalty. Because in our view the Realtors PAC violation is more serious than the Fed Up with Taxes or Maine Democratic Party violations, the staff recommends with some reluctance assessing the maximum penalty under 21-A M.R.S.A. § 1127(1) of \$10,000 against the Maine Association of Realtors PAC for the late filing of the independent expenditure report.

As I mentioned in my November 17 memo to you regarding the Fed Up with Taxes penalty, the staff is concerned that large penalties could be viewed by the political community in the state as overly punitive and could discourage political activity. Nevertheless, we believe that proportionality of penalties is the more important value – particularly within the same election cycle. That is the basis for our \$10,000 recommendation. If you view the Fed Up with Taxes violation as less serious (because of the very large amount of expenditures that were reported 2-3 days late), you may believe it is appropriate to assess a smaller penalty for the Realtors PAC violation.

Thank you for your consideration of this memo.

The Maine Association of REALTORS® Political Action Committee has been committed to meet the requirements of the campaign disclosure rules. This year, we inadvertently filed an independent expenditures report beyond the deadline. The error was entirely administrative; and the delay is described in greater detail below.

For the first time, our association used a third-party to develop materials and mail a one-time postcard campaign to a limited group in two campaign districts. This vendor gave two postage prices based on two options: first class and bulk mail.

On October 10, 2008, staff provided a credit card number by email to pay for the printing and postage. In that same email was a request for confirmation of the final amount to be able to do the independent expenditure paperwork. The vendor replied they would be back in contact after the long weekend with confirmation about when it would be in production, and that the postage mark could be adjusted in a way to get the "lowest possible" automated/electronic bulk mail rate. We assumed this was another postage amount, lower than the original quotes.

There was no further communication from staff to the vendor; or from the vendor back to staff. We did not receive copies of the postcards, there had not been a charge to the credit card, nor were there any comments from our own members in those districts - who likely would have also received the postcards. Any of those actions would have triggered a reminder that the mailing had occurred and resulted in a more timely, but still delayed, reporting. Additionally, association staff was distracted with other significant non-legislative activities which were happening at the same time.

On October 31, when our association PAC did not appear in a newspaper story about organizations making independent expenditures it became immediately apparent that the oversight in reporting had happened. The vendor was immediately contacted to get the invoice with accurate figures for the independent expenditure paperwork; and they confirmed that the charge had not yet been made to the credit card.

After bringing the paperwork to the Ethics Commission, the suggestion was made that we confirm that the mailing actually happened. On that same day, the vendor provided post office documents showing the mailing on October 16, 2008. With no public or member comments, we do not know when the mailing was actually first received by anyone.

It's clear MAR staff is responsible for getting the information and immediately reporting it. We immediately paid the fine, as outlined, as we agreed that there was a reporting violation. We are aware of the Commission's rules, and deeply regret that our association PAC now has to report a first violation of the rules. A representative of our association will be present at the meeting on December 29, 2008.

**RECEIVED**

DEC 10 2008

MAINE ETHICS COMMISSION



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

December 19, 2008

**By E-Mail and Regular Mail**

Cindy Butts  
Maine Association of Realtors PAC  
19 Community Drive  
Augusta, ME 04330

Dear Ms. Butts:

Thank you for your cooperation with my November 19 request, and for your willingness to meet with me to discuss the late filing of the independent expenditure report by the Maine Association of Realtors PAC. As you know, at its December 29 meeting the Commission will consider whether to assess an additional penalty against the PAC under 21-A M.R.S.A. § 1127(1) because the late filing resulted in a delay in the payment of matching funds to Deborah Simpson and David Miramant. The meeting will be held in the PUC hearing room in our building at 242 State Street.

For reasons expressed in my memo to the Commission members which I will e-mail you separately, the staff will recommend an additional penalty of \$10,000. I have discussed with you the PAC's opportunity to respond to the recommended penalty, but if you have any questions about the Commission's consideration of this matter, please telephone me at 287-4179. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne  
Executive Director

cp

2008 Election



RECEIVED

OCT 31 2008

MAINE ETHICS COMMISSION

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station, Augusta, Maine 04333  
 Office: 242 State Street, Augusta, Maine

IE 68

Website: www.maine.gov/ethics  
 Phone: 207-287-4179  
 Fax: 207-287-6775

## INDEPENDENT EXPENDITURE REPORT – 2008 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) Maine Association of REALTORS® PACMailing Address 19 Community Dr.City, Zip Code Augusta 04330 Telephone 207. 622. 7501

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

## INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE

- ☐ Independent expenditures of more than \$250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
- ☐ Once the aggregate amount per candidate exceeds \$250, any additional expenditures, regardless of amount, must be reported within 24 hours.

☒ Report of Independent Expenditure over \$250 per Candidate

## INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE (SELECT ONE REPORT)

- ☐ If the total of expenditures per candidate exceeds \$100 but is not more than \$250, the expenditures must be reported according to the schedule below.
- ☐ Once the amount per candidate exceeds \$100, all subsequent expenditures must be reported, regardless of amount, up to \$250 per candidate. Once the amount spent per candidate exceeds \$250 in the aggregate, independent expenditures must be reported within 24 hours.
- ☐ Do not include expenditures that you listed in previously filed reports.
- ☐ During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

## GENERAL ELECTION REPORTS

Reporting Period	Filing Deadline
<input type="checkbox"/> Through July 5	July 15
<input type="checkbox"/> Through September 30	October 10
<input type="checkbox"/> Through October 21	October 24
<input type="checkbox"/> October 22 - November 4	Within 24 Hours
<input type="checkbox"/> Through December 9	December 16

## OTHER

- ☐ Amendment to report dated: \_\_\_\_\_
- ☐ Other (specify): \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

[Signature]  
 Signature of PAC or Party Treasurer, or  
 Other Authorized Person Making Expenditure(s)

Date

10-31-08





COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 242 State Street, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## INDEPENDENT EXPENDITURE REPORT – 2008 GENERAL ELECTION

### AFFIDAVIT

STATE OF Maine  
COUNTY OF Kennebec

Cynthia B. Butts, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

(Signature of Affiant)

Sworn to before me, this 31 day of October 2008

(Notary Public/Attorney at Law)

**CYNTHIA B. PHILLIPS**  
Notary Public, Maine  
My Commission Expires October 7, 2011

## Schedule B-IE-1

## CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Senate 15	Snow Mello	Support	3186.21
Senate 22	Rector	Support	2969.58
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒			6155.79

## Schedule B-IE-2

## PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

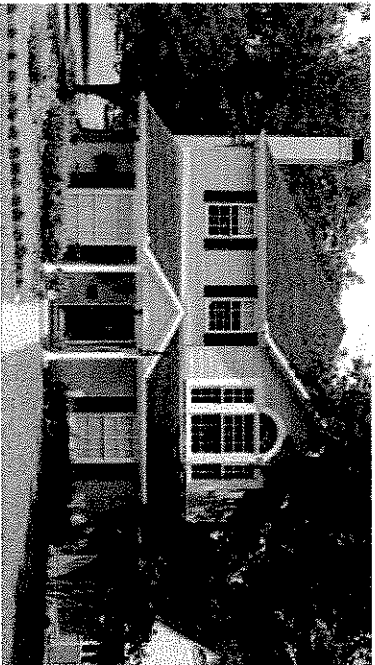
Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10-10-08	Creative Imaging group 68 Mussey Rd, Scarborough, ME 04074	LIT/MHS		2937.22
10-14-08	Creative Imaging group 68 Mussey Rd, Scarborough, ME 04074	POS		3218.57
A. Expenditures for this page ⇒				6155.79
B. Total for all other Schedule B-IE-2 pages (if any) ⇒				—
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒				6155.79

## Schedule B-IE-3

## EXPENDITURE DETAILS

- If you file an independent expenditure report after October 27, 2008 for the general election, you must provide the following information.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	October 10, 2008
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	October 2, 2008
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	October 31, 2008
4. A statement why the expenditure could not be reported by the eighth day before the election	This resulted from internal miscommunication by organizational staff.



As a legislator, Chris Rector understands that buying and improving a home is only possible with a strong Maine economy. That's why he supports policies that encourage **job creation and responsible economic development.**

In these challenging times, Chris also will be **cautious with your money.** High costs for gas, heating oil and food require legislators to be certain that our tax dollars are being **spent wisely.**

Please join us in supporting Chris Rector as your next State Senator. He'll help preserve the American dream of home ownership.

Owning a home  
is the biggest  
single investment for  
most Maine families.  
Protecting that investment  
requires strong leadership.

That's why we,  
the Maine Association of  
REALTORS®,  
enthusiastically endorse  
**Chris Rector**  
for the Maine Senate

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DEC 10 2008

MAINE ETHICS COMMISSION

# units mailed - 6,822

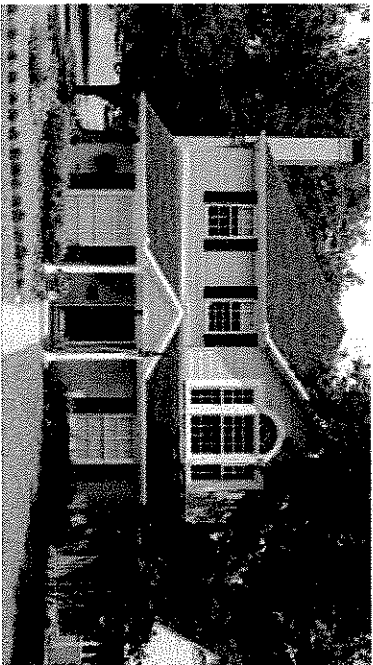
Paid for as an independent expenditure by the Maine Association of REALTORS®PAC  
and not authorized by or in consultation with the candidate or his agents  
19 Community Drive Augusta, ME 04330

# Chris Rector

for the Maine Senate

Great for home ownership.  
Great for the Maine economy.  
We hope you agree Nov. 4th.

Presort Std.  
US Postage  
PAID  
Permit # 208  
Augusta, ME



As a legislator, Lois Snowe-Mello understands that buying and improving a home is only possible with a strong Maine economy. That's why she supports policies that encourage **job creation and responsible economic development.**

In these challenging times, Lois also will be **cautious with your money.** High costs for gas, heating oil and food require legislators to be certain that our tax dollars are being **spent wisely.**

Please join us in helping to re-elect Lois Snowe-Mello as your Senator. She'll help preserve the American dream of home ownership.

Owning a home  
is the biggest  
single investment for  
most Maine families.  
Protecting that investment  
requires strong leadership.

That's why we,  
the Maine Association of  
**REALTORS®**  
enthusiastically endorse

**Lois Snowe-Mello**  
for the Maine Senate

**RECEIVED**

DEC 10 2008

MAINE ETHICS COMMISSION

#units mailed - 7,306

Paid for as an independent expenditure by the Maine Association of REALTORS®PAC  
and not authorized by or in consultation with the candidate or her agents  
19 Community Drive Augusta, ME 04330

# Lois Snowe-Mello for the Maine Senate

Great for home ownership.  
Great for the Maine economy.  
We hope you agree Nov. 4th.

Presort Std.  
US Postage  
PAID  
Permit # 208  
Augusta, ME





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

November 19, 2008

**By E-Mail and Regular Mail**

Cindy Butts  
Maine Association of Realtors PAC  
19 Community Drive  
Augusta, ME 04330

Dear Ms. Butts:

This is in regard to the late filing by the Maine Association of Realtors political action committee (PAC) of the independent expenditure report in support of Lois Snowe-Mello and Christopher Rector. The PAC has already paid a penalty of \$1,231.20 for the late filing.

Under 21-A M.R.S.A. § 1127(1), the Ethics Commission is authorized to assess an additional civil penalty if the late filing of an independent expenditure report results in a delay of payment of matching funds to a candidate. Because the PAC's late report did delay matching funds, I likely will bring the late filing to the attention of the Commission members at their monthly meeting on Monday, December 29, 2008 at 9:00 a.m. for consideration of whether to assess an additional penalty.

**Please respond to this letter no later than Friday, December 12 with a written explanation of why the report was filed late.** The Commission staff will use your response in deciding whether to recommend the assessment of any additional penalty under § 1127(1). Your response likely will be included in the written materials sent to the Commission members for their December 29<sup>th</sup> meeting regardless whether the staff recommends an additional penalty. Please mention in your response whether you or another representative of the PAC would be available to attend the Commission's December 29<sup>th</sup> meeting if necessary. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne  
Executive Director

cp